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In the

Supreme Court of the United States

TARA BROOKS, MARY STRIKLAND, EVIE CROSBY, REGINA FIELDS, JOHNNY SOLOMON, CHERYL WILSON, REVA PRICE, MICHAEL LYNCH, ESMERALDA LOPEZ, BRYAN TUBBS, CHRISTINE CLARK, CURTIS JEFFERS, JUANITA T. RANDLE, DIANE RANDLE, WILLIE B. RANDLE, JR., LAWRENCE TATE, and EARNEST LEE,

Petitioners,

v.

THE BOARD OF ELECTION COMMISSIONERS OF THE CITY OF CHICAGO,

Respondent.

On Petition for Writ of Certiorari to the Illinois Appellate Court, First Judicial District

PETITION FOR A WRIT OF CERTIORARI

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47 pp

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QUESTION PRESENTED

MAY AN ELECTION AUTHORITY DEVIATE FROM A STATUTORILY-PRESCRIBED FORMAT FOR PUBLIC POLICY QUESTIONS WHERE THE MINORITY SPANISH-LANGUAGE RENDITION OF THE PROPOSITION IS TREATED IN AN INFERIOR MANNER TO THE MAJORITY ENGLISH-LANGUAGE RENDITION, CAUSING A BIASED BALLOT TO VOTERS WHO SPEAK EITHER LANGUAGE.

PARTIES TO THE PROCEEDING

Petitioners are individuals who resided in and were registered to vote in the 28th and 34th Precincts of the 29th Ward, City of Chicago, and were at pertinent times legal voters in those precincts and Ward. Respondent, The Board of Election Commissioners of the City of Chicago (hereinafter generally the "Board") is the duly-appointed election authority which is the unit of local government solely responsible for the planning, management and conduct of all elections in the City of Chicago.

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PETITION FOR A WRIT OF CERTIORARI

Petitioners Tara Brooks, et al., respectfully petition for a writ of certiorari to review the judgment of the Illinois Appellate Court (First Judicial District) in the instant case.

OPINIONS BELOW

The Opinion of the Illinois Appellate Court was rendered on August 30, 2002. Petitioners filed a petition for rehearing, which was denied on November 1, 2002. Petitioners sought discretionary leave to appeal to the Illinois Supreme Court, which was denied on February 5, 2003.

JURISDICTION

The Opinion of the Illinois Appellate Court, issued on August 30, 2002 and yet unpublished (case No. 01-2283), affirmed the trial court's entry of summary judgment against petitioners and in favor of defendant-respondent Board of Election Commissioners of the City of Chicago. (A copy of the Appellate Court's Opinion is attached as Appendix A.) Petitioners filed a petition for rehearing, which was denied on November 1, 2002. (A copy of said denial of rehearing is attached hereto as Appendix B.) Petitioners sought discretionary leave to appeal to the Illinois Supreme Court, which was denied on February 5, 2003. (A copy of the order denying the petition for leave to appeal is attached hereto as Exhibit "C".) Jurisdiction of this Court is thus invoked under 28 U.S.C. sec. 1254(1).

STATUTORY PROVISIONS INVOLVED

42 U.S.C.A. sections 1973aa-1a(a) and (b) provide generally that citizens of language minorities have been excluded from effective participation in the election process

by various practices and procedures, and that among the ameliorative steps election authorities must take are the translation of voting materials into the language of certain minorities in certain elections.

The Illinois Election Code, 10 ILCS 5/23-24, regarding the contest of referenda Illinois, provides in pertinent part:

> "In the case of all . . . questions of public policy submitted to the voters of this State, and of all questions of public policy submitted to voters of any political subdivision or district, any 5 electors . . . may contest the results of said election by filing a written statement in the circuit court . . . in like form as in other cases of contested elections in the circuit court . . ."

Likewise, the Illinois Liquor Control Act, 235 ILCS 5/9-19, regarding the contest of a local option referendum on the sale of alcohol, provides in pertinent part:

> "Any 5 legal voters . . . may within 10 days after the canvass of the returns . . . contest the validity of such election . . . Any registered voter in the political subdivision or precinct in which the election has been held may appear in person, or by counsel, in any such contest to defend or oppose the validity of the election."

Paragraph 5/9-6 of the Illinois Liquor Control Act, entitled "*Form of proposition,*" provides in relevant part that: "*The proposition shall be in substantially the following form:*"

Shall the sale at retail of alcoholic liquor (or alcoholic liquor other than beer containing not more than 4% of alcohol by weight) or (alcoholic liquor containing more than 4% of alcohol by weight in the original package and not for consumption on the premises) be prohibited in (or at) .....?	**YES**	
	NO	

STATEMENT OF FACTS

On November 7, 2000, the Board submitted the following form of ballot to the voters of the 28th Precinct of the 29th Ward:

414	SI **YES**	**"Shall the sale at retail of alcoholic liquor be prohibited in this 28th Precinct of the 29th Ward of the City of Chicago?" (as such precinct existed as of the last General Election)**
416	**NO** NO	"Debe la venta al detal de bebidas alcoholicas ser prohibida en este 28avo Recinto del 29avo Distrito de la Ciudad de Chicago?" (como tal recinto existia desde la ultima Eleccion General)

C.R. at 35, 53. (The record shall be referred to as "C.R.," as it was designated and referred to below, with reference to the appropriate page(s).)

The same proposition was presented to voters of the 28th precinct of the 29th Ward, with that 28th precinct referred to, as opposed to the 34th precinct. C.R. at 35, 53.

On November 27, 2000, two different sets of plaintiffs, consisting of legal voters of the 28th and 34th precincts of the 29th Ward of the City of Chicago, respectively, filed two different complaints. Each complaint generally alleged that the respective propositions failed to comply with the statutory format as provided for in the Illinois Liquor Control Act, and the Voting Rights Act, and each complaint requested that the circuit court hold that the local option elections at issue be invalidated. C.R. at 2-7 and 453-58. Given the similarity of the issues and facts, the cases were consolidated for purposes of summary judgment, and the cases were later consolidated on appeal to the First District of the Illinois Appellate Court. C.R. at 478.

The Board and plaintiffs each moved for summary judgment. In its motion for summary judgment, the Board asserted that it has used a punch card system for voting in Chicago precincts since the March, 1982, general primary election. This system calls for the insertion of a cardboard stock ballot card (containing either 312 or 456 punch positions) into a ballot book assembly which contains ballot label pages. These pages have the names and ballot position numbers of the candidates and the propositions in a given precinct. C.R. at 96. Since the March, 2000, primary, the Board has used a punch card containing 456 punch positions, to accommodate increasing numbers of offices and propositions. Id.

For referenda such as the local option propositions involved below, a ballot position number is assigned to a punch position, which enables a "Yes" vote to be cast favoring the proposition, and a separate ballot position number is assigned to a punch position enabling a "No" vote

to be cast. C.R. at 97. A stylus is used by the voter as a punching device to punch out the chads (perforated squares). As a voter turns the pages of the ballot book, different numbers are exposed on either the left or right side of the ballot label page. The votes are recorded on the ballot card, both horizontally and vertically, by punching a hole through the assigned ballot position on the ballot card. Id.

To accommodate requirements that the ballots and election materials be printed in English and Spanish, the Board has begun printing ballots which contain both language versions of the text. The first local option ballot using both languages was printed in 1992 on facing pages, with English and Spanish printed separately on each page, with common answers and punch positions in the center corresponding to the language each voter read. Later, the Board began printing both languages together on the same ballot page in all precincts. CR. At 97, 101-233. Prior to the instant cases, the Board received two complaints which challenged the form of the ballot for local option referenda used at the April 4, 1995, elections.

Plaintiffs supported their motion for summary judgment with the affidavit of attorney Michael E. Lavelle, formerly the Chairman of the Chicago Board of Election Commissioners, who averred that there was sufficient space available upon the November 7, 2000, ballot which would have allowed the Board to publish the English and Spanish versions of the propositions on separate and facing ballot pages, due to the fact that 38 punch-card positions were not used in the election. Lavelle further averred that the format presented to petitioners "differs significantly" from the statutory form prescribed by section 9-6 of the Liquor Control Act, in that, *inter alia*, two questions, one in English and one in Spanish, were presented in the same rectangular space. The English question was opposite the

"Si/Yes" position, and the Spanish question was opposite the "No/No" position, and the English language question (unlike the Spanish language question) was in bold-faced type. C.R. at 278-80.

At hearing upon the Motions to Dismiss, the parties stipulated that the local option ballot presented to the Plaintiffs on November 7, 2000, deviated from the strict compliance from the statutory form in the following ways:

- The text of the local option proposition, as well as the "Yes" and "No" choices, was printed in the Spanish language. [Tr. P. 38, L7-9].
- Punch position numbers 414 and 416 were added to the November 7, 2001 ballot, making it possible for voters to express their choice under the punch card system of voting [Tr. P. 38, L7-9].
- The "Yes" and "No" choices were to the left of the proposition text, instead of to the right. [Tr. P. 38, L7-9].
- English text was printed alongside the "Yes" choice. Spanish was not.

  [Tr. P.40, L 13-21].
- English text and choices were emboldened. Spanish was not. [Tr. P.40, L 13-21].
- English choices (but not proposition text) were printed on the ballot with larger type than Spanish [Tr. P.41, L 3-8].
- English choices were centered on the ballot at stylus holes. Spanish was not.

  [Tr. P.40, L 13-21].

- English and Spanish texts were printed inside the same rectangular ballot space

  [Tr. P.40, L 13-21].

Additionally, the parties stipulated that the following facts are true:

- On November 3, 1992, the local option had two separate and facing pages, with English on one page and the Spanish on the other, with common choices and arrows in the middle of each [Tr. P.41, L 17-21].
- Sufficient space existed on the November 7, 2000 ballot to allow the English and Spanish languages placement on separate pages [Tr. P.40, L 13-21].
- For purposes of determining the validity of this election, it is irrelevant whether the Plaintiffs had the opportunity to observe or correct the published ballot prior to November 7, 2000 [Tr. P.50]. For purposes of determining validity of this election, it is irrelevant whether the local option question on November 7, 2000 was approved or disapproved by a majority of the voters [Tr. P.51].

The trial court granted the Board's motion for summary judgment and denied petitioners' motion, finding that the ballot substantially conformed with the requirements of the Liquor Control Act and that the *"ballot provided a clear and meaningful choice to vote either for or against the proposition."* Id. at 70. On appeal, the Illinois Appellate Court held that the ballot in this case *"substantially complied with section 9-6 of the Liquor Control Act."* Appendix A at p. 8. Petitioners sought discretionary appeal to the Illinois Supreme Court; however the Illinois Supreme Court denied petitioners petition for leave to appeal on February 5, 2003. See Appendix C.

REASONS FOR GRANTING PETITION

1. THE TRIAL COURT ERRED IN GRANTING, AND THE APPELLATE COURT ERRED IN AFFIRMING, A SUMMARY JUDGMENT AGAINST PETITIONERS WHERE THE MANIPULATION OF THE BALLOT FORM VIOLATES THE VOTING RIGHTS ACT BECAUSE THE BIASED BALLOT DENIED A FAIR AND HONEST ELECTION FOR BOTH ENGLISH-SPEAKING AND MINORITY-LANGUAGE VOTERS.

The Voting Rights Act's (42 U.S.C.A. section 1973) purpose is to promote practical implementation of the fifteenth amendment, and to ensure that no citizen's right to vote is denied or abridged on account of race. *NAACP v. New York*, 413 U.S. 345, 93 S.Ct. 2591, 37 L.Ed.2d 648, 653-54 (1973). 42 U.S.C.A. section 1973aa-1a(a) and (b) provide generally that citizens of language minorities have been excluded from effective participation in the process by various practices and procedures, and that among the ameliorative steps election authorities must take are the translation of voting materials into certain minorities' languages in certain elections. With the Voting Rights Act, Congress intended to eradicate voting discrimination with all speed. *Chinese For Affirmative Action v. Leguenec,* 580 F.2d 1006, 1008 (9th Cir. 1978).

Here, the ballots inexcusably deviated from a simple but mandatory statutory form in a manner that discriminates against Spanish-speaking voters. The choices were on the left, as opposed to the right side of the ballot. The negative choices only were presented adjacent to the Spanish translation of the question, while the positive choices were alongside the English question. The Spanish portion was in lighter shade and smaller type than the English version. It is obvious that the proposition was slanted so as to encourage passage of the affirmative, and at the expense of the Spanish-speaking minority receiving meaningful and clear choice. While the Board may claim

it did not mean to treat the Spanish-speaking voter differently, good faith is not a defense. *Chinese for Affirmative Action, supra*. This Court should additionally address this blatant and unjustifiable discrimination in violation of the Voters' Rights Act.

The failure to comply with the Voting Rights Act which occurred in this case is likely to recur. Yet, it is a denial of rights which may escape likely review because of the small number of voters in a local option referendum, because the minorities intended to be protected do not sufficiently understand English to recognize that the election authorities are treating their referendum in an inferior way, and, likewise, because the English-speaking voters may not realize the biased ballot could skewer their vote. Alternatively, because a contest to the validity of the election must be filed within 10 days after results are officially published, there may not be sufficient time to complain and review the actions of the election authority.

2. BOTH THE FORM AND SUBSTANCE OF THE PROPOSITIONS AT ISSUE FAILED TO SUBSTANTIALLY COMPLY WITH THE ENABLING STATUTE, IN THAT THE BALLOT WAS BIASED IN FAVOR OF THE "YES" VOTE.

GENERAL AND SPECIAL STATUTORY LAW

10 ILCS 5/23-24 provides for the contest of propositions in Illinois, and provides in pertinent part:

> "In the case of all . . . questions of public policy submitted to the voters of this State, and of all questions of public policy submitted to voters of any political subdivision or district, any 5 electors . . . may contest the results of said election by filing a written statement in the circuit court . . . in like

> form as in other cases of contested elections in the circuit court . . ."

Likewise, the Illinois Liquor Control Act provides for the contest of a local option referendum on the sale of alcohol. 235 ILCS 5/9-19 provides in pertinent part:

> "Any 5 legal voters . . . may within 10 days after the canvass of the returns . . . contest the validity of such election . . . Any registered voter in the political subdivision or precinct in which the election has been held may appear in person, or by counsel, in any such contest to defend or oppose the validity of the election."

The trial court granted the Board's motion for summary judgment under 735 ILCS 5/2-1005. In *Rumford v. Countrywide Funding Corp.*, 287 Ill App. 3d 330, 678 N.E.2d 369 (1997), the court waxed explanatory with respect to the summary judgment procedure in Illinois. The court stated:

> "Summary judgment is properly granted if 'the pleadings, depositions, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law.' [Citation.] The purpose of summary judgment is not to try questions of fact, but to determine whether such questions exist. [Citation.] In determining whether a genuine issue of fact exists, the court must construe the evidence strictly against the movant . . . . Summary judgment will be granted only when the right of the moving party is clear and free of doubt." *Id.* at 334.

BODY OF ARGUMENT

The petitioners complaints in this case alleged, *inter alia*, that the propositions submitted to the voters failed to satisfactorily comply with the Illinois Liquor Control Act which provides for the forms of such propositions. According to Paragraph 5/9-6 of the Illinois Liquor Control Act, such propositions ***"shall be in substantially the following form"*** (emphasis added):

Shall the sale at retail of alcoholic liquor (or alcoholic liquor other than beer containing not more than 4% of alcohol by weight) or (alcoholic liquor containing more than 4% of alcohol by weight in the original package and not for consumption on the premises) be prohibited in (or at) .....?	**YES**	
	NO	

Instead of complying with the form which the legislature prescribed, however, the Board designed and presented the local option referenda to the petitioning voters as follows:

414	SI **YES**	**"Shall the sale at retail of alcoholic liquor be prohibited in this 28th Precinct of the 29th Ward of the City of Chicago?" (as such precinct existed as of the last General Election)**
416	**NO** NO	"Debe la venta al detal de bebidas alcoholicas ser prohibida en este 28avo Recinto del 29avo Distrito de la Ciudad de Chicago?" (como tal recinto existia desde la ultima Eleccion General)

It is evident from a casual glance at the statutorily prescribed format and the format used in the precincts involved, that there are numerous differences between the proposition formats; indeed, these differences were stipulated to below. The deviations from the enabling statute include (but are not limited to): the choice portions (that is, "Yes" and "No" and "Si" and "No") of the propositions are at the left, as opposed to the right, of the propositions; the affirmative and negative choice portions are not each included alongside the proposition, but rather the affirmative choices are in one box along the English version of the proposition, while the negative choices are both in a box alongside the Spanish version of the proposition; and one language (English) is in bold print, in larger type, and centered along the stylus, while one language (Spanish) was not, and both languages were intermingled.

The Board argued, and the lower courts held, that despite these and other deviations, the form of the ballot substantially complied with the enabling statute. The

voters, not just of these affected precincts of the City of Chicago, but of the entire state of Illinois and the nation, need this Honorable Court to examine, and clearly set forth, the proper standards which define and govern substantial compliance with statutorily mandated ballot forms and where the Voting Rights Act is implicated.

In fact, a brief history of the Illinois courts pronouncements upon the issue reveal that the mandated substantial compliance is becoming less and less substantial. In *Howard v. Chicago and Eastern Illinois Railroad Co.*, 296 Ill. 246, 249-50 (1921), the Illinois Supreme Court stated with respect to substantial compliance with a prescribed statutory form of ballot:

> "The word substantial, as ordinarily used, means essential, material or fundamental. A substantial copy of the form of the ballot designated in the statute must evidently be one that contains the essence of the form in the statute—one giving the correct idea but not necessarily the exact expressions in the statutory form. The words of the statute, 'the ballots at said election shall be substantially in the following form,' necessarily convey the idea that the ballot to be used or voted by the voters is not required to be an accurate or exact copy but one which embodies or contains the substance or main features of the ballot found in the statute."

The ideas expressed in *Howard* proved sufficient to find statutory compliance for years. See, e.g., *Dick v. Roberts*, 8 Ill. 2d 215, 133 N.E.2d 305 (1956); *People ex rel. Davis v. C.B. & Q. R.R. Co.*, 48 Ill.2d 176, 268 N.E.2d 411 (1971). Additionally, in *Knappenberger v. Hughes*, 377 Ill. 126, 35 N.E.2d 317 (1941) the Illinois supreme court noted that the *raison d'etre* of underlying election cases which held elections invalid for lack of substantial compliance was that "the voter was not given as clear an alterna-

tive to vote for or against the proposition by the ballot used as he would have if the statute had been followed . . ."

In the case of *Hoogasian v. Regional Transportation Authority*, 58 Ill. 2d 112, 317 N.E.2d 534 (1974), however, the court "perhaps unwittingly" introduced a new concept. In reviewing the sufficiency of a ballot for a referendum election on the creation of a Rapid Transit Authority, it noted that in the context of that election, transportation authorities and mass-transit districts were not such obscure entities that "persons of ordinary intelligence" had no idea what they were. *Id.* at 125. However, this comment was really addressed not to substantial compliance with the statutory form, but rather to the assertion that the proposition itself was uninformative and meaningless so as to leave the voter bereft of what he or she was voting on. *Id.* at 124.

Illinois courts and the Board itself have seized on this concept of voter intelligence and are going too far with it. In *Havlik v. Marcin*, 132 Ill. App. 2d 532, 270 Ill. App. 3d 189 (1971), the appellate court in reviewing the statutory form of a local option referendum, observed that the words **"this precinct"** were known to **"every voter of intelligence."** 132 Ill. App. 2d at 537. Note that the intelligence level of the voter is not even confined by a qualifier as merely needing to be "ordinary." Voters now, it would appear, have to be intelligent people in order to have their rights of meaningful choice protected. The Board, likewise, in underlying briefing, argued that they need only satisfy this standard.

Requiring undefined "intelligence" of a voter is not a factor which is wisely employed in reviewing these cases. The concept is vague, means different things to different people, and being wholly subjective, leaves open the potential for inconsistent decisions. The potential exists that thousands, if not tens of thousands of voters, may be

disenfranchised in various referenda. The legislature presumably has considered such things as the intelligence of the voters, and enacted statutes which set forth the form to be employed. The Board is to substantially comply with this form, and the focus should not be upon intelligence, but should remain upon compliance.

Other courts have held that the failure to use a statutorily-prescribed form constitutes a violation of the mandatory provision of the liquor laws and renders an election voidable. See, e.g., *Moyer v. Kelley*, 93 S.W.2d 502 (Tex. App.). While minor irregularities in the conduct of a local option election will not vitiate the election (see e.g., *Wall v. Great Atlantic & Pacific Tea Co.*, 295 N.Y.S. 360, 162 Misc. 635), there must still be substantial compliance. *McCluney v. Stembridge*, 206 Ga. 321, 57 S.E.2d 203. This is in accord with the general election law pertaining to statutorily-prescribed formats of referenda, which requires compliance with the enabling statutes. See. C.J.S. Elections, sections 156, 170, 173.

The Illinois Appellate Court stated in *Krauss v. Board of Election Commissioners*, 287 Ill. App. 3d 981, 681 N.E.2d 514 (1997):

> "When a special statute dictates the form of the ballot, there must be substantial compliance with the special statutory mandate or the election is void. [Citation.]
>
> "Substantial compliance, rather than strict compliance, with this type of statutory ballot is sufficient. [Citation.]
>
> "Determination of substantial compliance is a question of law for the court. The test is whether the voter was given as clear an alternative as if the statutory form had been identically followed. [Citation.]

> "The focus is on the existence of a meaningful choice for the voters. A ballot is sufficient if the voter has a clear opportunity to express a choice either for or against it. [Citations.]
>
> "Thus, courts consider whether the deviation in the ballot was misleading or confusing to the voters. [Citation.]

Krause involved a similar format to that employed here in a local option case. There, like here, the local option ballot form also had the questions and the responses on the opposite sides of the Liquor Control Act's format, and there, too the affirmative responses were placed next to the English version of the proposition, with the negative forms placed next to the Spanish version. Because the *Krause* decision turned upon improper translation of the English into Spanish (287 Ill. App. 3d at 986-87), it did not reach the deviations in the format. However, *Krause* is supportive of the petitioners in the case sub judice, as the court noted that a need on the part of the Board to comply with the Voting Rights Act does not excuse a failure to follow the dictates of the enabling statute. 287 Ill. App. 3d at 987.

It is undisputed that in this case, the Board could have followed the statutory format in a manner more representative of the statutorily prescribed format. There was room to present the proposition and responses with separate boxes on separate pages, so that the most offensive deviations which occurred would have been avoided. The choices in the English and Spanish translations could have been adjacent to the same-language question. The bolder version of the English language in greater-sized type could (presumably) have thus been avoided. Curiously, the Board has never explained this manifestly pro-English bias to approval of the proposition by placing an emboldened, enlarged English question

next to the affirmative choices, with the English version only centered at stylus holes. Your petitioners submit that (contrary to the Illinois Appellate Court's characterization at Appendix A, p. 8), this obvious and unexplained bias in favor of the proposition's affirmative vote takes this matter to a challenge of not merely of deviations in form, but of substance, as well.

What the lower courts did know, in addition to the stipulated and obvious deviations, was that the format employed "significantly" differed from the statutory format. Given this evidence of record, and given the manifest deviations from the statutory format, the trial court erroneously concluded *as a matter of law*, that there was substantial compliance. Upon a full hearing, with testimony from qualified opinion witnesses and the testimony of affected voters and Board witnesses, whether the requisite level of compliance was achieved can be determined. Certainly a genuine issue of material facts exists upon the issue, given the record as it stands.

It is not just the voters in two precincts of a ward of the City of Chicago who need this Court to address this matter; all of the voters of the State of Illinois need protection from what amounts to an offensive lack of effort at compliance with enabling statutes' statutory formats of ballot propositions. Moreover, voters nationwide may need similar protection. The Board and other Boards, perhaps, need to have explained to it the importance of making every effort to substantially comply. This Court should tell the Hispanic or other Spanish speaking voters of this State that it is not acceptable to place their translations of propositions in lighter and smaller type, thereby building a bias into the result of the election. If ever this Court needed to reaffirm the integrity of the election process as it pertains to the conduct of referenda, the instant matter presents such a case.

CONCLUSION

The instant petition for leave to appeal involves a final judgment, as it pertains to a grant of summary judgment which disposed of the issues as to all parties. Important questions of compliance with the Voting Rights Act and of voters rights to fair and balanced formatting of referenda are involved. The issues which petitioners seek to raise, and which the lower courts swept under the rug, are of vital importance, since compliance with the legislature's prescribed ballot forms to avoid the potential disenfranchisement of substantial portions of the electorate goes to the very heart of an open and free society. Accordingly, petitioners respectfully request that this Honorable Court grant their petition for writ of certiorari, order the certified record below, allow the matter to be fully briefed herein, reverse the judgment of the lower court below, and grant whatever relief is just and appropriate.

Respectfully Submitted,

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